

01-1080

No. _____

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1991

JOHN PESCE,

Petitioner,

vs.

COUNTY OF DU PAGE,

Respondent.

**Petition For Writ Of Certiorari
To The Appellate Court Of Illinois
Second Judicial Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the judicial practice in Illinois of permitting a person punished by contempt to purge himself only by compliance with the requirements of the Court's order to the "reasonable satisfaction" of his adversary without a hearing denies "due process" under the Fifth Amendment and Fourteenth Amendment.

2. Whether the Petitioner was denied "due process" as required under the Fifth Amendment and the Fourteenth Amendment when the Order finding him in contempt, pursuant to monies due and performance required, lacked certainty and definiteness.

3. Whether the Petitioner was denied "due process" as required under the Fifth Amendment and the Fourteenth Amendment when Petitioner was denied the right to an impartial tribunal.

4. Whether the Petitioner was denied "due process" as required under the Fifth Amendment and the Fourteenth Amendment when compliance with the Order was impossible.

5. Whether the Petitioner was denied "due process" as required under the Fifth Amendment and the Fourteenth Amendment when no right of appeal was afforded from a determination that he had not purged himself of contempt, according to his adversary's subjective and biased whim.

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PETITION FOR WRIT OF CERTIORARI

JOHN PESCE, respectfully petitions for a Writ Of Certiorari to review the Judgment of the Appellate Court of Illinois, Second District, in this cause, review of which was denied by the Supreme Court of Illinois, dismissing the Appeal for lack of jurisdiction.

OPINIONS BELOW

The opinion of the Appellate Court of Illinois, Second District No. 2-90-0799 dismissing the Appeal for lack of jurisdiction (Appendix A. *infra*) and the Order of the

Supreme Court of Illinois NO. 72276 denying Petitioner leave to appeal (Appendix B. *infra*) are not reported.

JURISDICTION

The Supreme Court of Illinois declined to grant Petitioner Leave to Appeal on October 2, 1991. There is no provision in Illinois practice for the filing of a Petition for Rehearing of such decision by the Supreme Court of Illinois to deny Leave to Appeal.

The Petition of the Supreme Court of Illinois' Order refusing Leave to Appeal, was filed October 2, 1991. This Court had jurisdiction to review the Illinois Appellate Court's decision by Writ of Certiorari pursuant to 28 U.S.C. Section 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the interpretation of the following provisions:

1. The Fourteenth Amendment to the United States Constitution, which provides, in pertinent part:

" . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. The Fifth Amendment to the United States Constitution, as applied to the States by the

Fourteenth Amendment, which provides in pertinent part:

"No person shall be . . . deprived of liberty . . . without due process of law."

STATEMENT OF FACTS

THE DECISIONS BELOW:

1. HEARING

The Respondent, the County of DuPage, filed a four count Complaint on August 8, 1989 against a "John Mola" seeking fines for violations of its zoning ordinances, and temporary and permanent injunctive relief to cease violation of said ordinances. No prayer was made for the Defendant to perform any work or obtain any permits. (C 1) (C 6)

The suit was initiated and summons served on John Mola ("Mola") service was had on that party by serving a "Mrs. Mola". (C 1-8) John Pesce was not mentioned in the proceeding prior to final judgment. Mr. Pesce appeared *pro se*.

On January 4, 1990 a hearing was held which granted not only the relief sought by the County in the Complaint, but more importantly, granted relief in addition to that requested in the Complaint. Neither John Pesce, who was an officer of a Mola Construction Company, which corporation was likewise never joined as a party in this proceeding, appeared in his own behalf *pro se*. On January 4, 1990 the Trial Court entered an Order against "John Mola" which provided in pertinent part as follows:

. . . It is hereby Ordered that upon the Court's finding that 1) the Defendant has violated Sec. 37-8.2-1 of the Du Page County Zoning Ordinance in that he stored equipment and material on the subject property (PIN 05-01-202-008) without proper screening; and 2) the Defendant has violated Sec. 37-13.9.9 of the Du Page County Zoning Ordinance in that he placed fill on the adjoining lot to the west of the subject property without an excavation and fill permit, the Defendant shall pay a fine of \$500.00 plus Court costs for each of 4 counts of the Complaint; It is further Ordered that the Defendant is permanently enjoined, until further Order of the Court from storing equipment and materials on the subject property without proper screening and from maintaining and placing fill on the adjoining property without an excavation and fill permit; It is further Ordered that the Defendant shall 1) remove all equipment and materials stored in the side and rear yards of the subject property within 7 days hereof; 2) obtain an excavation/fill permit to remove the fill illegally placed on the property to the west of the subject property on or before 3/4/90; 3) obtain a permit for the erection of a fence on or before 3/4/90. It is further Ordered that Defendant may move for a reduction of the four \$500.00 fines, and the Court will consider same along with comments of County of Du Page on how well Defendant has complied with this Order, upon proper notice being given. (C-10, 11 emphasis added) (Appendix)

2. COMPLIANCE

Thereafter Mola Construction Company (not Mr. "Mola" or Mr. Pesce) filed an application for (1) a fence

permit and (2) a fill/excavation permit and paid the fee pursuant to said Order.

On March 9, 1990 the County filed a Petition for Rule to Show Cause seeking to hold Mola in contempt for *inter alia* failure to obtain a fill permit on or before March 4, 1990 and "maintaining" illegally placed fill on the property to the west of Mola's property. (C 12-13)

On March 9, 1990 the Trial Court issued a Rule to Show Cause (C 16) for Defendant's failure to pay a \$500.00 fine on each count (C 20), and to "obtain an excavation/fill permit on or before March 4, 1990". (C 16) Due to additional information requested by the County regarding the engineering plan, previously submitted with the prior application dated February 2, 1991, another application with new engineering plans was submitted on April 2, 1991. In addition, the entire fine was paid in full prior to Pesce's incarceration. (C 20)

On May 29, 1990 counsel appeared for the Petitioner, John Pesce. When he appeared for the pro se litigant he was threatened with contempt when he appeared on behalf of Mola. (C 22)

After an "evidentiary hearing", the County maintained that "Mola" *failed* to timely obtain a permit *because the County disapproved of the engineering plans submitted before March 4, 1991* (emphasis added). Pesce claimed that Mola Construction could not complete the work finally approved by the County due to extremely wet weather conditions, muddy terrain and flooding and the inability of obtaining a proper easement or license from the adjoining landowner to come on to the property or to obtain the

County's approval of such work as had been done by Mola.

3. INDEFINITE AND UNCERTAIN SENTENCE

Contrary to the evidence, the Trial Court found Petitioner guilty of Contempt *but sentenced Petitioner Pesce to serve the sentence for the non-existent Mr. Mola to not more than 21 days in jail with the contempt to be purged by full compliance with the Permit and certain plans subject to the "reasonable satisfaction" of Plaintiff's " . . . Zoning and Building Department and the designated officials thereof . . . "* (C 23-25) The Order entered May 30, 1990 provided in pertinent part as follows:

Defendant has willfully failed to comply with the Court Order of January 4, 1990 in that he failed to pay a fine of \$500.00 plus court costs for each of the four (4) counts of the Complaint herein; to obtain an excavation/fill permit on or before March 4, 1990, . . . that the Court's Order of January 4, 1990 is clear and unambiguous; . . . and "that the Defendant is in contempt of this Court . . . that Defendant be sentenced to not more than 21 days in the DuPage County Jail, said sentence to be stayed until June 20, 1990 at 9:00 a.m. and said contempt may be purged by full compliance with DuPage County Excavation and/or fill permit dated 4/9/90 and also dated 5/18/90 and plans incorporated therein as approved on 4/19/90, identified as Defendant's Exhibits 2, 1, and 6 respectively; *foregoing compliance shall be to the reasonable satisfaction of the DuPage County Zoning and Building Department and the designated officials thereof . . .* (C 23-24) (Emphasis supplied)

No proof was introduced by the County that Pesce¹ had ownership or control of the subject property and no Rule to Show Cause had been issued requiring "compliance" with any permit.

After staying its indefinite and uncertain contempt Order from June 20, 1990 to July 23, 1990, the Trial Court on July 23, 1990 entered Orders incarcerating Pesce for a period not to exceed 21 days for civil contempt, although Pesce had purged himself completely regarding *all* the fines and costs and had attempted to complete all the necessary excavation pursuant to the engineering plans but was unable to, due to the excessively muddy terrain resulting from recent heavy thunderstorm activity and *the approval of his adversary*. (C 28, 33) (C 162-268)

4. PESCE'S ADVERSARY, NOT THE COURT, IMPROPERLY "DECIDED" COMPLIANCE

The Trial Court unlawfully delegated to Pesce's adversary, the County, its judicial function of determining compliance with its Order. In so doing, the Court placed the burden on Pesce to show he could not obtain access to the adjoining land that was owned by a third party (not a party to the litigation) and "do the necessary work that is going to have to be done to remedy this situation . . . "

¹ Over his counsel's objection, John Pesce was added to the Contempt Order by conveniently making him "a/k/a" to "fix" the Respondent's failure to properly name and serve him and lack of adherence to the Rules of Civil Procedure and Illinois Supreme Court Rules.

and delegated the monitoring of compliance to the Plaintiff, County of Du Page. (C 145-148) In short, the Court improperly delegated its judicial authority to Pesce's antagonist and condemned him to a quest to please his biased adversary to obtain not only a permit without setting standards or guidelines for what plans would be acceptable but relegated his ability to act and even purge himself to the caprice of his prosecutor. Unless this Petition is granted, Pesce will be confined in the Du Page jail until his adversary, the County of Du Page sees fit to approve his release. This is an unprecedented result and a monumental injustice which can only now be remedied by the Court's granting of Mr. Pesce's Petition.

On July 23, 1990 Pesce filed his notice of appeal from the Trial Court's indefinite and uncertain Orders of contempt and incarceration. (C 29-30)

The Trial Court refused to hear motions to stay its Order or set bond pending appeal and on July 23, 1990 the Appellate Court, Second Judicial District entered an Order granting Pesce's motion for Bond and Stay.

5. ILLINOIS APPELLATE COURT AND ILLINOIS SUPREME COURT

On June 20, 1991, the Illinois Appellate Court for the Second Judicial District dismissed the Appeal for lack of jurisdiction. Thereafter, on July 25, 1991, the Petitioner filed a Petition for Leave to Appeal to the Illinois Supreme Court. On October 2, 1991 the Illinois Supreme Court denied the Petition without comment. (Appendix B).

REASONS FOR GRANTING THE WRIT

A.

THE TRIAL JUDGE'S BEHAVIOR DENIED PETITIONER DUE PROCESS AND THE RIGHT TO AN IMPARTIAL TRIBUNAL.

On May 29, 1990 counsel appeared for the previously pro se Petitioner and was immediately threatened with contempt when he attempted to represent the Petitioner (C 22). This Court has emphasized that it "will unhesitatingly protect counsel in fearless, vigorous and effective performance of every duty pertaining to the office of the advocate on behalf of any person whatsoever." *Sacher v. United States*, 343 U.S. 1, 13-14 (1952).

The Court's bias was apparent, when contrary to the evidence, the Court found the Petitioner guilty of contempt. (C 23-25) (Appendix F). This judgment was not the product of a fair and impartial hearing. *Offritt v. United States*, 348 U.S. 11, 13 (1954). The conduct of the Court failed to reflect conventional judicial demeanor. *Id.* at 12.

In sum, the judgment demonstrates that the Court did not represent the impersonal authority of law. *Id.* at 17. Such behavior should not be supported by higher Courts. The most primordial concept of due process requires that an impartial tribunal pass judgment.

B.

COMPLIANCE WITH THE ORDER WAS IMPOSSIBLE.

The Petitioner acknowledges that Courts have an "inherent power to enforce compliance with their lawful

orders through civil contempt." *United States v. United Mine Workers*, 330 U.S. 258, 330-332, (1947). But the exercise of such authority in contempt cases must be restrained by the principles that "the least possible power adequate to the end proposed." *Anderson v. Kunn, Wheat* 204, 230-231 (1821).

In the present case, the Court found that the Petitioner: (1) stored equipment and materials without proper screening; (2) placed fill on adjoining property without an excavation and fill permit; (3) was fined \$500.00 plus costs for the 4 counts of the Complaint; (4) permanently enjoined from storing equipment and materials without proper screening and from maintaining and placing fill without an excavation permit; (5) to remove all equipment and materials stored in the side and rear yards; (6) to obtain excavation/fill permit to remove fill on adjoining property and (7) to obtain permit for the erection of a fence. (January 4, 1990 Order, Appendix C).

A Rule to Show Cause was issued by the Trial Court on March 20, 1990 for Petitioner's failure to pay the fine and failure to obtain the excavation/fill permit on or before March 4, 1990. (Appendices D, C) The Petitioner had applied on February 2, 1990 for an excavation/fill permit (Appendix E), however, the Petitioner was unable to timely obtain a permit because the Respondent disapproved of the engineering plans submitted. Additional engineering plans were submitted which were finally approved by the Respondent. It was impossible to complete the work by May 29, 1990 due to flooding from extremely heavy thunderstorms and the delay in obtaining an easement from the owners of the adjoining property where the excavation was to have been performed.

Are Courts to order that which is an impossibility and then punish them for "refusal" to perform it? *Maggio v. Zeitz*, 333 U.S. 56, 70 (1948). The Rule to Show Cause only referenced that the Petitioner "pay \$500.00 plus costs on each count of the Complaint, and obtain an excavation/fill permit on or before March 4, 1990." (Appendix D).

However, the May 30, 1990 Order finding the Petitioner in contempt references compliance with excavation/fill permits subsequently dated 4/19/90 and 5/18/90 and more importantly, states "*foregoing compliance shall be to the reasonable satisfaction of the [Respondent] Du Page County Zoning and Building Departments and designates officials thereof.*" (Appendix F) (Emphasis supplied). Thus, unbelievably, the Trial Court delegated in advance its judicial function to Mr. Pesce's adversary in the litigation! Every Court Mr. Pesce has presented this outrageous denial of due process to has either failed to grasp it or ignored it.

An Order of civil contempt is coercive and intended to compel one to act. But to jail the Petitioner for contempt for omitting an act that he is powerless to perform would make such a proceeding, PURELY PUNITIVE, to describe it charitably. *Id.* at 72. This Court in *Maggio* further explained that the *contemnor* would always have the right to be released as soon as it was apparent he could not obey. *Id.* A coercive contempt order should not be issued when it appears that there is no wilful disobedience but only an incapacity to comply. *Id.* at 13.

An imprisonment order for civil contempt provides the contemnor with keys to his cell. He can prevent or end the sentence and discharge himself at any moment by

doing what he had previously "refused" to do. *Gompers v. Buckstove & R. Co.*, 221 U.S. 418, 442 (1910). The total amount of sums due was paid to the Court on May 30, 1991. The number of days of imprisonment was discretionary by the Court based upon the conduct of the Petitioner. However, after *all* the sums were paid, the Petitioner not surprisingly, anticipated some reduction in the indefinite sentence entered on May 30, 1990. (Appendix F). The "key" in a restitution case is full payment of whatever is due. *People v. Penson*, 197 Ill.App. 3d 941, 557 N.E.2d 230 (1st Dist. 1990). Apparently, the Petitioner never possessed the keys to his cell when he paid the court \$2,121.00 on May 30, 1990.

The Petitioner had purged himself completely of the monetary sums due and owing. The remainder of the Order dealt with the excavation of the adjoining property to the *sole satisfaction of his adversary*, the Respondent! The Order was not modified after the sums were paid, but it continued to maintain the original, indefinite sentence.

Contempt orders, under Illinois law, that do not provide for the contemnor's release if he should pay the sums ordered are improper. *In Re: Marriage of Logston*, 103 Ill.2d 266, 469 N.E.2d 167 (1984).

What does the Court primarily seek to accomplish by imposing a sentence, is the test recited in *Chillitani v. United States*, 384 U.S. 364, 370 (1966). In the present case, it is punitive not coerciveness. The Petitioner did not possess the "keys" when he paid all the sums due and owing. In addition, the adversary, the Respondent, was given his "keys" by the Court and he never had a chance to purge himself.

C.

THE PUNISHMENT IMPOSED ON MAY 30, 1991 WAS NOT FINAL FOR PURPOSES OF REVIEW AND PESCE WAS DENIED APPELLATE REVIEW ON THE QUESTION OF PURGE DESPITE A TIMELY APPEAL.

On July 23, 1990, the trial court entered orders remanding the Defendant to custody of the County Sheriff and incarcerating the Petitioner-Alleged Contemnor for a period *not to exceed 21 days* for civil contempt. (C 28, 33; 162-268) (Appendices H, I) (emphasis added). It was on that day, that the trial court entered its first definite order, namely, remanding the Petitioner to the custody of the Sheriff but incarcerating him for an unspecified number of days, rather than conducting an evidentiary hearing to determine if the Petitioner-Alleged Contemnor had or *could* have purged himself.

Whether to impose 2, 5, 9, 12 or any number of days was discretionary by the Court base upon the conduct of the Petition. We cannot delve into the mind of the Judge. Therefore, no definite order was imposed until July 23, 1991.

Over one-hundred years ago the Illinois Supreme Court found that a contempt Order which will "enforce obedience to its Order[s] by the imposition of a fine in a sum of money with an Order for execution, or by a *definite term of imprisonment . . .* " is a final appealable Order. *Lester v. Berkowitz*, 125 Ill. 307, 308, 17 N.E. 706 (1888) (emphasis added)

A Definite sentence is defined as follows:

"Sentence calling for imprisonment for specified number of years as contrasted with indeterminate sentence which leaves duration to prison authorities (e.g. parole boards) and good behavior of prisoner. Also called "determinate sentence."

Determinate is defined as:

"That which is ascertained; what is particularly designated."

Black's Law Dictionary 423, 450 (6th ed 1990).

A sentence must show with fair certainty the intent of the Court and exclude any serious misunderstandings by those who must execute them. *United States v. Daugherty*, 269 U.S. 360, 363 (1925). The phrase "not to exceed" has been interpreted by Courts to lack the definiteness required so that the warden or other officers may understand and execute it. *State of Iowa v. Jackson*, 101 N.W.2d 731, 736 (1960).

An Order has the essential elements of finality, under Illinois law, when, if affirmed, the Trial Court only has to proceed with its execution. *McDonald v. Walsh*, 367 Ill. 529, 12 N.E.2d 206, 208 (1937).

The May 30 Order was not final for purposes of review. In particular, the contempt required sums of monies to be paid, in addition to acts to be performed. If the Petitioner was sentenced on May 30, before he paid the sums of money on May 30, it is impossible for the Sheriff to ascertain how many days the Petitioner would have left to serve since he had partially purged himself.

Although the majority of cases that recite the need for certainty and definiteness in sentences of imprisonment are criminal in nature, the Fifth and Fourteenth Amendment forbids the Federal Government and the States from depriving any person of liberty without due process of law. *Bloom v. State of Illinois*, 391 U.S. 194, 195 (1968).

The maxim "id certum, est quod certum reddi potest sed id magis certum est quod de semetipso est certum" – "That is certain which can be made certain, but that is more certain which is certain of itself[.]" succinctly sums up the reasoning of the above cited cases. *Ex parte Parker*, 225 N.C. 369, 35 S.E.2d 167, 172 (1945).

As previously noted, the Court did not distinguish between the possible number of days for "wilfully failing" to comply by non-payment of the sums due and by not obtaining an excavation/fill permit by March 4, 1990. The only *certainty* contained in the Order is that \$500.00 for four counts plus costs was due, that the Petitioner was remanded to the custody of the Sheriff and that his adversary, the Respondent, held the "keys" to his cell. (Appendices F, G, H, I). It was not until July 23, 1990 that the Court "rubber stamped" the decision delegating the County refusing to allow Mr. Pesce to purge himself by taking the unsubstantiated, unsworn representation of his adversary that compliance had not been had. A law or procedure which compels a litigant to submit his controversy to his adversary makes his antagonist his judge and denies due process. *Commissioners of Union Drainage Dist. 1 v. Smith*, 233 Ill. 417, 425, 84 N.E. 376, 378 (1908).

Based on his adversary's determination and whim, the Court took action by actually confining Mr. Pesce on July 23, 1990. Thus, Mr. Pesce's Notice of Appeal quickly filed on July 23, 1990, well within the 30 day appeal period, seeking a review of the Court's unprecedented and outrageous actions of that July day was timely. Mr. Pesce did not appeal earlier from the May 30, 1990 Order since it specifically provided a purge criteria which he ultimately could not accomplish due to impossibility and the time for compliance therewith was stayed by the Court through July 23, 1990. By rejecting his appeal, the Illinois Appellate Courts have compounded the deprivation since it has rendered the Court's improper delegation of the post-judgment question of whether Pesce purged his contempt to his adversary, thus not affording judicial review of his antagonist's subjective and self-serving determination. If this Court does not grant this Petition, Mr. Pesce will face indefinite confinement at the whim of his adversary without having had an opportunity for Appellate review before an impartial tribunal. A more gross denial of "due process" is difficult to imagine.



CONCLUSION

For all of the reasons stated above, the Petitioner, JOHN PESCE, respectfully prays that this Court grant his Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX A

No. 2-90-0799

[This Order Is Not Precedential
And Is Not To Be Cited]

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

COUNTY OF DU PAGE,)	
Plaintiff-Appellee,)	Appeal from the Circuit
)	Court of Du Page County.
v.)	
)	No. 89-CH-535
JOHN MOLA, a/k/a)	
JOHN PESCE,)	Honorable
)	S. Keith Lewis,
Defendant-Appellant.)	Judge, Presiding.

ORDER
(Filed Jun. 20, 1991)

The defendant, John Pesce, appeals from the court's contempt orders. The plaintiff, County of Du Page, has challenged our jurisdiction. We dismiss the appeal.

On January 4, 1990, the court found the defendant to be in violation of certain zoning provisions and ordered him to pay a fine and obtain certain permits by March 4, 1990. Later in March, the county sought and the court ordered a rule to show cause why the defendant should not be held in civil contempt for his failure to obey the

January 4 order. Following a May 30 hearing, the court found that the defendant had willfully failed to comply with the January 4 order. In pertinent part, the court's May 30 order was as follows:

"THE COURT FINDS that the Defendant has willfully failed to comply with the Court order of January 4, 1990. * * * IT IS HEREBY ORDERED that the Defendant is in contempt of this court; that he pay all outstanding fines and costs forthwith; that the defendant be sentenced to not more than 21 days in the Du Page County Jail, said sentence to be stayed until June 20, 1990, at 9⁰⁰ am [sic], and said contempt may be purged by full compliance with [the] Du Page County Excavation and/or Fill Permit[s] * * * to the reasonable satisfaction of the Du Page County Zoning and Building Departments * * * ; IT IS FURTHER ORDERED that the Defendant shall report to courtroom 603 at 9⁰⁰ am [sic] on June 20, 1990, without further notice."

The defendant paid fines and costs and returned to court on June 20. There, he acknowledged that he had not yet fully complied with the January order. The county insisted that the case had been called for the defendant to report for his maximum 21-day sentence, and not for status. However, the court stayed the execution of this sentence and ordered the defendant to report on July 23.

On July 23 the defendant brought emergency motions to set bond and stay enforcement. The court order [sic] the defendant to commence his maximum 21-day sentence *instantly*. On that same day, the defendant filed his notice of appeal and this court granted his emergency motion for an appeal bond. The notice of appeal states

that he appeals from the May 30 order and from the July 23 orders "committing [the defendant and] denying stay and bond."

On the appeal, the county brought a motion, to dismiss the appeal as untimely. We have taken that motion with the case. According to the county, the May 30 order that found the defendant in contempt and sentenced him to time in jail was final when entered. According to the county, because the defendant filed no appeal within 30 days of that order (see 134 Ill. 2d R. 303 (a) (1)), we have no jurisdiction to consider an appeal from that order. Regarding an appeal from the court's July 23 orders, the county assumes for the sake of argument that the notice of appeal was properly brought in relation to those orders; it asserts, however, that the appeal should be dismissed as to whose orders as the defendant's briefs raises no issues in their regard.

In his objection to the motion to dismiss, the defendant raises numerous arguments – some of them are directly related to the timeliness of this appeal and others are essentially discussions of the arguments which he presents for substantive analysis on appeal. The defendant's reply brief also addresses the issue of the timeliness of his appeal.

Regarding the timeliness of his appeal, the defendant argues that the court's May 30 order, by which the sentence announced was to be stayed until June 23, was not imposition of punishment. According to the defendant, under the May 30 order the sentence was not "imposed" or "determined" but merely "threatened." In his view, reviewable sanctions were first imposed in the July 23

order. He emphasized that because of the opportunity it allowed for purge of the contempt, the May 30 judgment could have been vacated any time before July 23; he characterizes the judgment as conditional and not appealable "until the July date."

An order of contempt imposing a fine or sentence of imprisonment is appealable, and it presents the reviewing court with the issue of the propriety of the order that has been violated. (*People ex rel. Scott v. Silverstein* (1981), 87 Ill. 2d 167, 174.) However, where no punishment has been imposed, an order finding a party in contempt is not final or reviewable. (*In re Buchmiller* (1985), 135 Ill. App. 182, 185.) Furthermore, if the court retains jurisdiction for future determination of matters of substantial controversy, an order is not final. *People ex rel. Valle v. Valle* (1983), 113 Ill. App. 3d 682, 684.

In this case we find that the court's May 30 order was final and appealable when entered. In that order, the court made a finding of contempt and imposed both a fine and a maximum term of imprisonment. (Cf. *In re Marriage of Buchmiller* (1985), 135 Ill. App. 3d 182, 185.) The mere fact that the term of imprisonment in an otherwise final order was "stayed" until a future date does not extend the time for appeal. (See *Meyer v. Blue Cab Co.* (1984), 129 Ill. App. 3d 440, 441.) Neither is the existence of the defendant's ongoing opportunity to purge inconsistent with the existence of a final order; any order of punishment for civil contempt must include a purging provision (*In re Marriage of Logston* (1984), 103 Ill. 2d 266, 289), and is not conditional or unappealable for that fact. See *In re Estate of Hader* (1983), 114 Ill. App. 3d 611, 617;

cf. Chicago Catholic Workers' Credit Union v. Rosenberg (1952), 346 Ill. App. 153.

In its May 30 order, the court fully determined the defendant's punishment for not complying with the January 4 order. There were no matters of substantial controversy over which the court retained jurisdiction. Rather, as the county noted when the parties appeared on June 20, and as the language of the order made clear, the court merely had stayed the clearly determined sentence until the morning of June 20. The court's intended action on the case was fully determined on May 30, although the defendant did not risk actual imprisonment if he purged his contempt before the appearance scheduled in the May 30 order.

For the record, we note that the defendant incorrectly asserts that the court's inclusion of an imprisonment provision transformed this contempt from civil in nature to criminal in nature. (See *People ex rel. North America Investment & Loan Association v. Kitzen* (1945), 389 Ill. 54, 59.) With its format favoring purge of the contempt, this is clearly a case where the court sought to compel the defendant's obedience to its prior order, not to punish the defendant's prior wrongful conduct. See *People v. Marcisz* (1975), 32 Ill. App. 3d 467, 470.

Regarding the balance of the defendant's arguments, we note that the defendant correctly observes that its notice of appeal was filed within 30 days of the Court's July 23 orders. Nevertheless, despite that those orders are related to the May 30 order, the defendant has presented no well-supported argument directed at those particular orders rather than at their predecessors. (See 134 Ill. 2d R.

341(e)(7); *Department of Transportation v. Association of Franciscan Fathers* (1981), 93 Ill. App. 3d 1141, 1152.) We are aware of no authority by which the defendant may bootstrap his timely appeal of the July 23 orders to receive review of the May 30 order from which he took no timely appeal.

Based on the foregoing, we dismiss the appeal.

Appeal dismissed.

GIEGER, J., with WOODWARD and BOWMAN, JJ.,
concurring.

APPENDIX B

**STATE OF ILLINOIS
SUPREME COURT**

At a Term of the Supreme Court, begun and held in
Springfield, on Monday the 9th day of September, 1991.

Present: Ben Miller, Chief Justice

Justice William G. Clark	Justice Thomas J. Moran
Justice Horace L. Calvo	Justice Michael A. Bilandic
Justice James D. Heiple	Justice Charles E. Freeman

On the 2nd day of October, 1991, the Supreme Court
entered the following judgment:

No. 72276

County of DuPage,

Respondent,

v.

John Mola, a/k/a John Pesce,

Petitioner.

Petition for Leave to Appeal from Appellate Court, Sec-
ond District, Nos. 2-90-0799, 89-CH-535

The Court having considered the Petition for Leave to
Appeal and being fully advised of the premises, the Peti-
tion for Leave to Appeal is DENIED.

As Clerk of the Supreme Court of the State of Illinois and
keeper of the records, files and Seal thereof, I certify that
the foregoing is a true copy of the final order in this case.

A-8

IN WITNESS WHEREOF, I have
hereunto subscribed my name and
affixed the Seal of said Court, this
thirteenth day of December, 1991.

(Seal)

/s/ JULEANN HORNYAK, Clerk
Supreme Court of the State of
Illinois

APPENDIX C

January 4, 1990

UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF DUPAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

County of Du Page)	
)	No. <u>89CH535</u>
v.)	
John Mola)	

ORDER

(Filed Jan. 4, 1990)

This matter coming on for hearing, the parties appearing and presenting evidence and argument, the Court being fully advised in the premises,

IT IS HEREBY ORDERED that upon the Court's findings that: 1) the Defendant has violated § 37-8.2-1 of the DuPage County Zoning Ordinance in that he stored equipment and materials on the subject property (PIN 05-01-202-008) without proper screening; and 2) the Defendant has violated § 37-13.8.9 of the DuPage County Zoning Ordinance in that he placed fill on the adjoining lot to the west of the subject property without an excavation and fill permit, the Defendant shall pay a fine of \$500 plus court costs for each of the 4 Counts of the Complaint;

IT IS FURTHER ORDERED that the Defendant is permanently enjoined, until further order of the Court, from storing equipment and materials on the subject property without proper screening and from maintaining

and placing fill on the adjoining property without an excavation and fill permit;

IT IS FURTHER ORDERED that the Defendant shall:
1) remove all equipment and materials stored in the side and rear yards of the subject property within 7 days hereof; 2) obtain an excavation/fill permit to remove the fill illegally placed on property to the west of the subject property on or before 3/4/90; 3) obtain a permit for the erection of a fence on or before 3/4/90.

It is further ordered that Defendant may move for a reduction of the four \$500 fines, and the Court will consider same along with comments of County of Du Page on how well Defendant has coupled with this Order, upon proper notice being given. /s/ DH

Enter: /s/ Hennessy
JUDGE

Date: 1-4-90

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Defendant.

))))))))

No. 89 CH 535

RULE TO SHOW CAUSE

This matter coming before the Court on petition of County of DuPage proper cause having been shown, the Court being fully advised in the premises and having jurisdiction of the parties and subject matter.

IT IS HEREBY ORDERED that John Mola a/k/a John Pesce appear before this Court in courtroom No. 603 located at:

- [] DuPage County Courthouse, 201 Reber Street, Wheaton, Illinois
- [] DuPage County Building, 421 North County Farm Road, Wheaton, Illinois
- [X] DuPage Court Annex, 209 East Liberty Drive, Wheaton, Illinois

[] _____

on April 17, 1990 at 9:30 A.M. and show cause if any he may have, why he should not be held in Civil Contempt of Court for his failure to obey an order of the Court entered January 4, 1990 requiring him to pay \$500.00 plus costs on each count of the Complaint, and obtain an excavation/fill permit on or before March 4, 1990.

IT IS FURTHER ORDERED that respondent be personally served a copy of this order.

ENTER: /s/ S. K. Lewis
JUDGE

ANTHONY LONG
DEPUTY CLERK

NOTICE

IF YOU FAIL TO APPEAR BEFORE
THE COURT AT THE TIME AND
PLACE SET FORTH, YOU MAY BE
TAKEN INTO CUSTODY AND HELD
IN JAIL ON CHARGES OF CON-
TEMPT OF COURT.

A13

APPENDIX E

BUILDING

04113

Permit Fee Receipt

AND USE

Dated February 2, 1990

Feb. 2, 19 90

Received of Mola Construction Co., 18 W. 721 Ave.

Name

Mailing

Chateaux N. Oak Brook, Ill. \$ 100⁰⁰ As Building and Use

Address

Permit Fee

For the erection of Ex/Fill

Lot No. Block No. in

 Subdivision located in Milton

Township, DuPage County, Ill. 05-01-202-006 1008

Receipt of this fee does not
guarantee that a permit will
be issued. In case permit is
refused a partial refund will
be made.

DUPAGE COUNTY
BUILDING DIVISION

/s/ N. Sememk

Ch #20241

APPENDIX F

May 30, 1990

UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF DUPAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

County of DuPage)	
)	No. <u>89CH535</u>
v.)	
John Mola a/k/a John Pesce)	

ORDER
(Filed May 30, 1990)

This matter coming on for continued hearing on a rule to show cause, the Court hearing testimony and argument, the Court being fully advised in the premises;

THE COURT FINDS that the Defendant has wilfully failed to comply with the Court order of January 4, 1990 in that he failed to pay a fine of \$500.⁰⁰ plus court costs for each of the four (4) counts of the complaint herein; that he failed to obtain an excavation/fill permit on or before 3/4/90;

THE COURT FURTHER FINDS that the Court's order of January 4, 1990 is clear and unambiguous;

IT IS HEREBY ORDERED that the Defendant is in contempt of this court; that he pay all outstanding fines and costs forthwith; that the defendant be sentenced to not more than 21 days in the DuPage County Jail, said sentence to be stayed until June 20, 1990 at 9⁰⁰ am, and said contempt may be purged by full compliance with DuPage County Excavation and/or Fill Permit dated 4/19/90 and also dated 5/18/90, and plans incorporated

therein as approved on 4/19/90, identified as Defendant's Exhibits 2, 1, and 6 respectively; foregoing compliance shall be to the reasonable satisfaction of the DuPage County Zoning and Building Departments and the designated officials thereof;

IT IS FURTHER ORDERED that the Defendant shall report to courtroom 603 at 9⁰⁰ am on June 20, 1990, without further notice.

Enter: /s/ S. K. Lewis
JUDGE

Date: 5-30-90

APPENDIX G

June 20, 1990

UNITED STATES OF AMERICA
STATE OF ILLINOIS COUNTY OF DUPAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

County of DuPage)
)
 v.) No. 89CH535
)
John Mola)

ORDER
(Filed June 20, 1990)

This matter coming on for Defendant John Mola a/k/a John Pesce to report to the DuPage County Jail for commencement of sentence not to exceed 21 days for civil contempt of Court; the parties appearing and the Court being fully advised;

It is hereby ordered, that Defendant's sentence is further stayed until July 23, 1990 at 9:00 am at which time he shall report to courtroom 603 for commencement of sentence; IT IS FURTHER ORDERED that Defendants motion for leave to file answer to Rule instanter is granted.

Enter: /s/ S. K. Lewis
JUDGE

Date: 6-20-90

A17

APPENDIX H

July 23, 1990

UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF DUPAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

County of DuPage)

v.)

No. 89CH535

John Mola, a/k/a Pesce)

ORDER

(Filed July 23, 1990)

This matter coming on for Defendant John Mola, a/k/a John Pesce to report for the commencement of a sentence not to exceed 21 days for civil contempt of court, the parties appearing and the court being fully advised;

IT IS HEREBY ORDERED that the Defendant commence the sentence previously imposed herein instantler.

Enter: /s/ S. K. Lewis
JUDGE

Date: 7-23-90

APPENDIX I

July 23, 1990

State of Illinois

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT

DU PAGE COUNTY

County of DuPage)	No. <u>89 CH 535</u>
vs.)	
John Mola, a/k/a John Pesce)	
Defendant)	

ORDER

(Filed July 23, 1990)

JAIL COMMITMENT

IT IS HEREBY ORDERED that the Defendant be removed from the bar of this Court to the common jail of Du Page County, there to remain for a period of not to exceed 21 days unless sooner released by due process of Law, for civil contempt of Court.

DATED this 23rd day of July, A.D. 1990

Enter: /s/ S. K. Lewis
JUDGE

